

Tangible personal property may be purchased for resale only if it is to be sold or is incorporated into an item that is to be sold. See 86 Ill. Adm. Code 130.410. (This is a GIL).

September 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

If a car dealer's new car inventory is damaged and needs body work, is the body work done subject to the Service Occupation tax, the Retailer's Occupation tax or is it exempt from tax as an item for resale?

This is inventory that is for sale to customers in the regular course of business. The body work being done is to get the inventory back to its original condition. The dealer does not increase the price of the vehicles in order to offset his cost for the repair. They are offered for sale at the original sales price.

It would seem logical that tax would apply in this situation since it is not collected in any other manner in the chain of gross receipts. However, we wanted to confirm this.

Your assistance is appreciated.

Tangible personal property may be purchased for resale only if it is to be sold or is incorporated into an item that is to be sold. An example of a resale item would be a new power steering pump or other repair part installed in a vehicle that has been purchased for resale.

Tangible personal property that is to be used or consumed in repairing a vehicle may not be purchased for resale. Examples of this would be sandpaper or liquid paint stripper. These items are not purchased for resale to a customer, but are costs of doing business that are not exempt from taxation. See the Department's regulations at 86 Ill. Adm. Code 130.410.

If tangible personal property is purchased in Illinois for resale, and not for use or consumption, the purchaser may provide the seller with a Certificate of Resale. A Certificate of Resale is valid if it contains the information set out in the enclosed copy of 86 Ill. Adm. Code 130.1405. However, whether a Certificate of Resale should be provided or tax paid on an item purchased for the bodywork will depend on the way the serviceman reports his tax base for purposes of the Service Occupation Tax.

The operation of an auto body shop to repair or provide service work on customers' automobiles would be subject to the Service Occupation Tax Act. Under this Act, a serviceman is taxed on tangible personal property transferred incident to service. For general information, we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen use to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining

whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

We are unable to answer your question directly since we do not know who will be performing the body work. If you, or a serviceman who pays Service Occupation Tax, is performing the body work, the parts that become a component part of the automobile may be purchased tax-free for resale. However, if you contract with a serviceman to perform the body work and the serviceman is an unregistered de minimis serviceman, he will incur Use Tax on the parts transferred to you incident to completion of the body work.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
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